

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

14 Cr. 203 (RJS)

DARRELL BENNETT,

Defendant.

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New York, N.Y.
December 9, 2016
4:10 p.m.

Before:

HON. RICHARD J. SULLIVAN,

District Judge

APPEARANCES

PREET BHARARA

United States Attorney for the
Southern District of New York

EUN YOUNG CHOI

Assistant United States Attorney

FEDERAL DEFENDERS OF NEW YORK

Attorneys for Defendant

PEGGY CROSS-GOLDENBERG

COLLEEN CASSIDY

1 (Case called)

2 THE COURT: Let me take appearances for the
3 government.

4 MS. CHOI: Good afternoon, your Honor, Eun Young Choi
5 on behalf of the government.

6 THE COURT: Ms. Choi, good afternoon to you.

7 MS. CROSS-GOLDBENBERG: Federal Defenders of New York
8 by Peggy Cross-Goldenberg and Colleen Cassidy for Mr. Bennett.

9 THE COURT: Good afternoon to each of you. Good
10 afternoon, Mr. Bennett.

11 THE DEFENDANT: Good afternoon.

12 THE COURT: We have some friends and family members.
13 Thank you for being here. Welcome. Some of you were here
14 almost two years ago when we did the sentencing then. Thank
15 you for coming back. I know at least several of you have
16 written letters to the Court and I thank you for taking the
17 time to do that. They are helpful.

18 We are here for a resentencing. On October 31, the
19 Second Circuit issued a mandate in connection with the
20 sentencing in this case. Although the circuit affirmed my
21 ruling with respect to the enhancement under the guidelines,
22 they remanded for resentencing in connection with a procedural
23 error related to -- I could only call it a failure to
24 explicitly refer to Section 5G1.1(a) of the guidelines.

25 To the extent there was any ambiguity, as I said in an

1 order that I issued on November 2, it seemed to me pretty clear
2 that I understood what the guidelines ramifications were where
3 the guidelines are higher than the statutory maximum. I
4 certainly had reference materials that I had read that
5 explicitly referred to that section. But, in any event, the
6 Court of Appeals thought it was not clear, so they remanded for
7 a resentencing. That's why we are here today.

8 I want to go over with everyone what I have reviewed
9 in connection with sentencing. If I have left anything out,
10 let me know. I have reviewed everything that was submitted
11 prior to sentencing last time. I rereviewed everything, every
12 word. I've also reviewed the transcript of the sentencing
13 proceeding that took place on December 19, 2014. I've also
14 reviewed, of course, the Second Circuit's opinion, which was
15 issued in October. I have rereviewed the order that I just
16 referred to, though it's a short order, from November 2. I
17 reviewed a letter from the government, dated November 21. It's
18 sort of a housekeeping letter, more than anything else, about
19 scheduling. I reviewed the December 2 submission of
20 Ms. Cross-Goldenberg. That submission is six pages,
21 single-spaced. It has a number of attachments, including
22 letters that I have read and reports that I have read. So I
23 thank those again who took the time to write. Mr. Bennett
24 wrote a letter that I also appreciated reading. Thank you. I
25 reviewed the government's December 5 sentencing letter, which

1 is three pages single-spaced.

2 That is what I think I have received in connection
3 with sentencing that I already did not consider the first time
4 around. Is there anything I have overlooked perhaps?

5 MS. CHOI: Not from the government, your Honor.

6 MS. CROSS-GOLDBENBERG: No, your Honor.

7 THE COURT: I don't think there is really a need to
8 repeat most of what took place back in 2014. The guidelines,
9 I've already made the calculation. I should state explicitly
10 for the record, in case there is any confusion, that by virtue
11 of the fact that the guidelines range exceeds the statutory
12 maximum of 10 years, then the guidelines range is 10 years,
13 pursuant to Section 5G1.1(a) of the guidelines. That being the
14 case, the guidelines range is not more than that.

15 However, as the Court of Appeals said, the Court is
16 free to consider the fact of a charge bargain or the fact that
17 the government decided to forego potentially more serious
18 charges that are carrying with them a mandatory minimum. They
19 carried a higher statutory maximum and it would have therefore
20 resulted in the guidelines of 11 to 13 years being relevant.
21 Again, I thought that was really the point of most of the
22 exchange on the higher range of 11 to 13. But the guidelines
23 range here is 10 years by virtue of 5G1.1(a). Those are the
24 guidelines.

25 Now, the other factors that the Court is required to

1 consider and considered at some length last time include the
2 individual characteristics of the defendant. They include also
3 the facts and circumstances of this offense, the need to impose
4 a sentence that promotes respect for the law and that provides
5 a just punishment for the offense. I have to also consider the
6 need to deter criminal conduct of this sort by the defendant
7 and by others; so, in other words, both specific and general
8 deterrence. I also have to consider the defendant's own needs
9 while in custody. I have to consider, of course, the need to
10 avoid unwarranted disparities between similarly situated
11 people. I normally go over this in much greater detail and try
12 to explain what each of those things means, and I did that
13 before and I think everybody is pretty familiar with them. I
14 won't belabor them unless people are not clear about some of
15 those things. Then I'm happy to elaborate. But I think you
16 get it. I think you know what the issues are.

17 There are a lot of materials that I have received
18 recently that obviously were not before me when I initially
19 sentenced Mr. Bennett, including the letters that I have talked
20 about, including some of the reports, including the fact that
21 while in prison Mr. Bennett has taken advantage of programs
22 available to him and done well at them. All of that is
23 relevant. Certainly I'm not going to and would never suggest
24 that those things are not relevant. I guess I would say that
25 most of them don't surprise me. They are good. They are good

1 developments and they are things that are worth being proud of
2 and they suggest growth and they suggest maturity and those are
3 all good things.

4 But I would say that these are things that I would
5 have expected and frankly did expect when I imposed the
6 sentence that I did two years ago. In other words, I
7 recognized and spent a great amount of time really talking
8 about the many good qualities that Mr. Bennett has. And those
9 good qualities, including his ability to be reflective, his
10 ability to be thoughtful, his intelligence, his decency, all of
11 those things I think are consistent with what has transpired
12 since. And so I say that just to be clear that I think that
13 most of the things that I've read are not sort of game changers
14 for me. They are things that I would have expected and things
15 that I'm gratified to see have been borne out because they
16 confirm my initial sense of Mr. Bennett and they confirm the
17 reasons why I sentenced the way I did last time.

18 With that initial reaction what we will do, as we did
19 last time, I'll hear from counsel. I'll hear from
20 Ms. Cross-Goldenberg.

21 Ms. Cassidy, are you going to be speaking also or just
22 Ms. Cross-Goldenberg?

23 MS. CASSIDY: Mainly Ms. Cross-Goldenberg, but feel
24 free to ask me any questions.

25 THE COURT: I'll hear from Ms. Choi and they may have

1 a chance to respond to each other. If they have questions of
2 each other or if I have questions based on what they say, I'll
3 certainly not be shy. I rarely am. And then I will ultimately
4 give you an opportunity to speak before I impose sentence,
5 Mr. Bennett, if you wish to. You don't have to. You have
6 written a very thoughtful letter, really beautiful letter and a
7 moving letter. If you wanted to rest on that, that would be
8 fine. If you wanted to say more, you have a right to do that
9 and you would be very welcome to.

10 I don't think there are any victims here, right,
11 Ms. Choi?

12 MS. CHOI: No, there are not, your Honor.

13 THE COURT: Victims also have a right to speak if they
14 wish to, but there are no victims here. I assume the victims
15 were advised of this resentencing.

16 MS. CHOI: Yes, your Honor. If you recall, there was
17 a submission with relation to the restitution situation for
18 which your Honor last time around issued restitution in the
19 form of a thousand dollars, and we had a submission along with
20 that to your Honor back in March of 2015. Other than that,
21 there isn't anything else in the record.

22 THE COURT: No one else has made any submissions.

23 MS. CHOI: Nothing new, your Honor.

24 THE COURT: Ms. Cross-Goldenberg, I'm happy to hear
25 from you. Again, a very characteristically thorough,

1 thoughtful, and beautifully written submission from you.

2 MS. CROSS-GOLDBENBERG: Thank you, your Honor.

3 Before I begin I do just want to introduce the people
4 who were here for Mr. Bennett so the Court knows who is here
5 and, as always, if the Court has questions, they would be more
6 than happy to answer them. The first is his mother, Wanda
7 Clarke.

8 THE COURT: Yes. I remember Ms. Clarke. Thank you
9 for being here.

10 MS. CROSS-GOLDBENBERG: And then his friends, Ashley
11 Shackelford and Jordan Powell, and actually on the end we have
12 Kate Hadley, a paralegal from our office.

13 All three of them were here for Mr. Bennett's initial
14 sentencing, all of them wrote to the Court in connection with
15 the initial sentencing, and all of them wrote to the Court
16 again with respect to his resentencing. His mother traveled up
17 from Florida. Jordan and Ashley are both in the city.

18 I think it's important because especially in a case
19 like this, where people learn things about their friends and
20 family that they didn't know, and a lot of people face total
21 abandonment by their support network. They go off to prison,
22 especially for the lengthy term that was imposed on
23 Mr. Bennett, and everyone else sort of writes you out of their
24 life for those seven years and aren't necessarily there for
25 you.

1 And I think what's been tremendous about Mr. Bennett's
2 network is that they have walked with him through his time in
3 custody and, as you can tell from the letters, they have
4 witnessed what he's gone through, the hard work that he has
5 done and his true rehabilitation. I'm glad they could be here
6 today and if the Court has further questions for them, they
7 would be more than happy to answer them.

8 THE COURT: I thought the letters were beautifully
9 written. It's rare that I see letters that are just so well
10 written, even aside from the content. What good writers you
11 are. But also you clearly felt deeply about what you were
12 writing. Thank you for taking the time to do it. I'm sure
13 there were other people who wished they could be here, but for
14 one reason or another couldn't fly in from other parts of the
15 country, but their letters are also very moving.

16 MS. CROSS-GOLDBENBERG: Thank you, your Honor.

17 As the Court can tell from my letter, I sort of
18 planned to take the same approach that the Court just did in
19 terms of not going over everything that we discussed at length
20 during the initial sentencing. I know that my letter in
21 connection with that was very lengthy in terms of going through
22 Mr. Bennett's childhood and the fact that his father exposed
23 him to sex and affairs and pornography and the sort of
24 pathological behavior that shaped him as a child, the impact of
25 which he really tried to ignore and sort of never processed and

1 dealt with until his arrest in this case. He always wanted to
2 project the image of a perfect son and in that sort of tempest
3 that led to the offense conduct of professional failure, deaths
4 in the family, his mother's illness, his depression, sort of
5 all of those things coming together around the time of the
6 offense conduct.

7 I'm happy to go into that more if the Court has
8 questions about that.

9 THE COURT: Believe me, you and I know each other for
10 a long time. I know how thorough you are and you know how
11 thorough I am. I have read everything again and your first
12 submission was an excellent submission. It was really well
13 done and thorough and carefully put together. I have not only
14 gone through that again, I've also gone through the entire
15 transcript of the last proceeding carefully and so I've heard
16 all your arguments and I know them probably as well as anybody.

17 MS. CROSS-GOLDBENBERG: That was how I prepared for
18 today, your Honor, on that assumption.

19 What I really want to do is what I said in my December
20 2 letter. I want to start with what's different, what's new.

21 The forensic psychologist in the BOP who treated Mr.
22 Bennett at FCC Petersburg told the Court that Mr. Bennett was
23 open to change. He was respectful. He had a strong desire to
24 overcome his substance dependence and had the initiative to
25 learn and succeed. She talked about his determination to lead

1 a pro-social lifestyle, which I assume is psychologist speak
2 for the opposite of an antisocial lifestyle.

3 THE COURT: That's what I took it to be.

4 MS. CROSS-GOLDBENBERG: A law-abiding life free from
5 criminal activity. And his extreme motivation to return to
6 society as a more productive citizen.

7 The treatment notes that we were able to attach to our
8 submission talk about his personal development, his self care,
9 his coping skills that he's developed. And you have an updated
10 opinion from Dr. Barday, who although there wasn't time for him
11 to meet with Mr. Bennett in person prior to these proceedings,
12 did have a chance to review his treatment records from the BOP
13 as well as the opinions of the psychologist and the staff
14 there, and he reiterated that Mr. Bennett is not a pedophile,
15 not a sexual predator. He is not dangerous to the community.
16 And it's evident that he lacks antisocial and psychopathic
17 tendencies, that he abounds with a desire to engage in
18 treatment, that he has proven himself to be capable and
19 committed to understanding the nature and psychological
20 underpinnings of his offense conduct.

21 THE COURT: Mr. Bennett was sort of moving down that
22 road when I sentenced him two years ago, too. I don't think
23 this is a change. This is a progression on a path that was
24 already begun. Would you agree with that?

25 MS. CROSS-GOLDBENBERG: Your Honor, it was interesting

1 to me that the BOP evaluations both used the word change. So I
2 think absolutely it was expected and actually the way I plan to
3 conclude my remarks is that it shouldn't surprise anyone who
4 was at the original sentencing that all those things are true.

5 But courts hear a lot of things at sentencing that
6 don't turn out to be true, and people make commitments and
7 promise judges that they are going to do things and they don't
8 follow through. I think what is important here is this wasn't
9 Mr. Bennett going through the motions. This wasn't him
10 complying with some sort of required programming. This was
11 initiative that he took to get into RDAP in the first place.

12 THE COURT: My concern was, there weren't more program
13 opportunities, that RDAP is good and there are a lot of things
14 to be said for it. But it's not the primary problem for
15 Mr. Bennett. But it didn't seem like there were many other
16 opportunities to get meaningful psychology services. Is that
17 fair? Should I be thinking about recommending a different
18 facility or something like that?

19 MS. CROSS-GOLDBENBERG: Your Honor, really the answer
20 that we get from you is, he has made use of everything that he
21 can make use of.

22 THE COURT: I'm surprised there hasn't been more made
23 available. There aren't more programs available to him, I
24 guess is what I'm saying.

25 MS. CROSS-GOLDBENBERG: I think that that really

underscores one of the reasons why it's community treatment that is what's appropriate from here on out. He has gotten the treatment that he can get in the BOP. And in terms of the sort of internal reflection and the sort of self-care progress that needs to be made, in terms of him getting to the root of his conduct and understanding sort of the psychological underpinnings and the things that he never dealt with as a child, he has done that work over the past two years.

And at this point what makes the most sense is allow him to maintain that progress in the community because he is going to be released. And to have this chasm now of five additional years where he sits there having completed the most intensive treatment he can get, he is still doing the outpatient drug program, but that's at this point more of a maintenance as opposed to something as useful as he could get once he is released and as he will get once he's released.

I think that point goes to why community treatment, as Dr. Barday recommended initially and as the BOP evaluations seems to say, that he's been committed to and, quite frankly, that he's ready for. I think that's the next step.

I think the letters from the friends and family really underscore this point in terms of him not going through the motions but, as his mom said, really using the time to benefit himself as another friend, Charisse, who actually was also at the first sentencing, said, in prison you spend every waking

1 moment trying to make up for the hurt that you have caused and
2 he will only be able to do better once he's released.

3 I think the hard work that he put into all this, it
4 demonstrates his remorse, it demonstrates his rehabilitation.
5 And as I said, I think to me it demonstrates that no further
6 time in prison is necessary.

7 I want to talk just briefly about the sort of
8 nonpersonal sentencing factors, the things that don't just go
9 to Mr. Bennett and his conduct.

10 THE COURT: Which was really the primary focus for
11 really the sentence that was imposed.

12 MS. CROSS-GOLDBENBERG: That's how I took it at the
13 time and that's how, in rereading the transcript, I took it.
14 And I think, you know, there is no doubt that the conduct here
15 and the videos here and the images here are shocking, they are
16 horrific. The Court I think called them barbaric. And there
17 needs to be punishment and there needs to be deterrence and we
18 need to promote respect for the law. But it's also true that
19 in this district the average sentence for a case under this
20 statute, under the most recent statistics that we have, that
21 the average sentence is 24 months.

22 THE COURT: But that doesn't discount for where in the
23 guidelines, right? Some guidelines are lower than the
24 guidelines here, which is 10 years, pursuant to Section 5G1.1.
25 And others, at least the ones you cited, many of them had

1 guidelines that were lower than that, right?

2 MS. CROSS-GOLDBENBERG: I am going to talk about them
3 in a second, your Honor. I want to make a couple of different
4 points on this front.

5 One of them is that 24 months can be a sufficient
6 sentence to provide just punishment, to provide general
7 deterrence, to promote respect for the law, and we have seen
8 that across this district over and over and over again in cases
9 of this nature.

10 You know, every case is unique and, like I said, I
11 want to go into a couple of the things that make this case
12 unique and also sort of guideline applications. But to some
13 extent it is possible to compare the punishment imposed for the
14 same conduct across cases, I think that's what the statute
15 requires, in order to avoid unwarranted sentencing disparities.

16 When you think about the factors that go into
17 sentencing, I think almost every factor cuts in favor of Mr.
18 Bennett; that is to say, cuts in favor of, if there is going to
19 be a sentencing disparity that's warranted, in his case it
20 would be a lower sentence, as opposed to a sentence that's
21 higher than average in this district.

22 The Court asked about the guidelines in those cases
23 and I think there is a couple of things. First, in some of
24 those cases that I cited in my letter, probation did determine
25 the same guideline range it determined in this case, the 97 to

1 121 months, which becomes 220 months, of course.

2 But in other cases, your Honor, and in fact I would
3 suggest in almost all those cases, the guidelines ranges are
4 the result of negotiated plea agreements. And what you see
5 there is the fact that in a case like this, in a general
6 file-sharing case, run-of-the-mill file-sharing case, which is
7 essentially what we have here, these guidelines enhancements
8 could apply in any case. Whether the parties reach a
9 agreement, let's say they didn't apply or the government didn't
10 seek that they applied, they could apply in almost every case.
11 I think to the extent that the guidelines on paper end up being
12 different, that doesn't necessarily mean that there is a
13 dramatic difference in the conduct.

14 In some of those cases, your Honor, and I am going to
15 talk about three in particular, but the government insisted on
16 the mandatory minimum, for example, on the charge that carried
17 the mandatory minimum, or the government requested a guidelines
18 sentence.

19 I think it says something about the relative
20 seriousness of Mr. Bennett's conduct, not to say that it's not
21 serious, but within this realm we are talking about, the
22 government both exercised its discretion to not charge the
23 mandatory count and to recommend a below-guidelines sentence.
24 And the Court has enough experience to know that that is a
25 reflection of the government's view of the seriousness of the

1 case and of his culpability.

2 There are some cases where the government says no.
3 The judge should not even have the discretion to consider a
4 sentence below five years because this is so serious. And in
5 this case the government didn't say that. They said, we think
6 the judge should have the discretion to consider a sentence
7 above five years, meaning, it's not the case that anything less
8 than five years would be inadequate. I think it's important to
9 look at it that way in terms of, to the extent that we are
10 comparing conduct at all.

11 Your Honor, the two cases that I cited in the footnote
12 in my December 2 letter that had that guideline range of 97 to
13 121 months, just what I could tell from the sentencing
14 transcripts of those cases, the *Bogdathi* case contained over a
15 thousand images. There were 129 images and 68 videos of known
16 victims, and in that case the defendant had been downloading
17 child pornography for 17 years, 17 years. Judge Abrams said it
18 was a very serious case, very serious conduct, that there was a
19 need for general and specific deterrence, and she sentenced him
20 to 18 months.

21 As part of the sentencing in that case she referred to
22 conversations she had with the sentencing submission where they
23 told her that from 2006 to 2013, the average sentence in this
24 district for Mr. Bennett's charge was 36 months and that in
25 2013, which was the last year for which she could get the data,

1 it was 24 months. That goes to say that you can provide
2 adequate deterrence, promote respect for the law and just
3 punishment with the average sentence being 24 months.

4 The *Landa* case, which was a very recent sentencing in
5 front of Judge Woods, there were 146 images, 106 videos. In
6 that case the government sought a guidelines sentence, which to
7 me says they viewed that conduct as relatively more serious
8 than they viewed Mr. Bennett's conduct, and there Judge Woods
9 imposed the average sentence, 24 months.

10 This Court recently imposed a sentence in a case that
11 did involve the five-year mandatory minimum in the case of U.S.
12 v. Steven Bryan. That case, from the Court's comments from the
13 sentencing transcript, there were 4,000 images involved, which
14 I assume reflects the multiplier of 75 videos, but I couldn't
15 quite tell. But in that case the defendant kept materials on
16 an external hard drive to help avoid detection. The
17 government, and this makes my earlier point about the
18 guidelines, in its sentencing submission the government
19 referred to at least one video that had rape in the title. It
20 was a video of rape. And yet in that case the four-level S&M
21 enhancement was not applied. I don't know. The parties
22 negotiated it out maybe. But it wasn't applied.

23 We can't just take the guideline ranges that are on
24 paper in these cases because more and more I think the U.S.
25 Attorney's Office is recognizing that under *Dorvy*, throwing the

1 book and throwing every guideline in a case is not the way to
2 go, even though on their face, just like in this case, they
3 apply.

4 In that case, not only did the government not drop the
5 five-year mandatory minimum, there was a suggestion at
6 sentencing from the Court that one of the factors that the
7 Court weighed negatively was the fact that the defendant had
8 put himself in a position to be around children through his
9 jobs, and there was some suggestion that maybe there had been
10 inappropriate touching involved in his care or oversight of
11 children. In that case, also, there was an argument that he
12 had not fully accepted responsibility, that he blamed the
13 government for his conduct or for his arrest and for the
14 situation that he was in. He lunged at the prosecutor,
15 apparently. There were all sorts of negative factors that
16 would go above and beyond anything in this case. In that case
17 the sentence was 66 months.

18 It's hard to see why Mr. Bennett's case, when you look
19 at all of the positives, why his case would require 18 months
20 of additional punishment, over and above that case. And so I
21 think this is all new information. I think they are all much
22 more recent cases than we had when we were here two years ago.

23 And, yes, the conduct here is serious, and no one has
24 ever denied that, and Mr. Bennett certainly has not shied away
25 from that. As we discussed at the first sentencing, the

1 punishment has to be just punishment, it has to be fair, and it
2 has to take into account the nature and circumstances of the
3 offense, but it also has to take into account Mr. Bennett's
4 history and characteristics.

5 I just wanted to talk about three categories of things
6 that I think make this case so different, and it's not just
7 that it makes it different in the sense that it's all positive.

8 THE COURT: Can I interrupt you for a second. The
9 government cited cases that weren't in your letter in which
10 high sentences, 100 months or more, were imposed. And so I was
11 just curious if you intended to distinguish those. 100, 108,
12 151 months.

13 MS. CROSS-GOLDBENBERG: Your Honor, I don't have all
14 the aggravating factors from those cases. And if the Court
15 wants them, I'm sure --

16 THE COURT: I'm just saying each letter referenced
17 cases, cases that go low or go high, depending on one's point
18 of view. The government in footnote 1 on page 2 of its letter
19 cites several cases, *U.S. v. Wallace*, *U.S. v. Yingst*, and *U.S.*
20 *v. Forrest* in which the sentences were much higher than the one
21 that I imposed.

22 MS. CROSS-GOLDBENBERG: Your Honor, I'm not sure that
23 all those cases are Southern District cases or even --

24 THE COURT: They are Second Circuit cases.

25 MS. CROSS-GOLDBENBERG: I see the Second Circuit in

1 the citations, but I don't have all those aggravating factors.
2 You know, it's only by looking at all of the factors in the
3 case that we can determine what the right sentence is.

4 But my point in referring to those three cases
5 specifically is that that can be enough. It's not a situation
6 where the only way to reflect the seriousness of this conduct
7 or to provide adequate punishment has to be a sentence of seven
8 years. I didn't even go into all the cases in this district
9 where district judges have imposed sentences of probation. I
10 had one within the last year where a defendant got one year of
11 probation. That's to say that those general factors that are
12 supposed to apply across the board can be met with a sentence
13 much lower than the one initially imposed in this case.

14 Then the question is, is there a reason for a
15 disparity. Is there a reason that Mr. Bennett's sentence
16 should be different than the average. I think that the three
17 reasons that his sentence should have been different from the
18 average is information that courts don't usually have in cases,
19 and that is what makes this case really unique. I'm talking
20 about his postoffense conduct, his postarrest conduct, and now
21 his postsentencing conduct.

22 With respect to the postoffense conduct, your Honor,
23 again, I'm talking about not postarrest, but postoffense, those
24 eight months between February and October of 2013, from the
25 time the agents seized his devices, there were eight months and

1 when he was arrested they seized all his new devices, and there
2 was no contraband, there was no pornography. And that speaks
3 volumes about the deterrent effect of the initial search and
4 how much punishment is necessary to effect those objectives.
5 The initial search promoted respect for the law, initiated
6 rehabilitation, got him moving down the road. Certainly it
7 deterred him from additional conduct.

8 The Court doesn't always have that information in the
9 case because there is not always that lag time. There was a
10 case that I cited in my 2014 letter that had that similar fact.
11 There was a lag of several months between the initial search
12 and the arrest. And when that defendant was arrested, this was
13 the Hector Garcia case in front of Judge Jones, when that
14 defendant was arrested, there was new child pornography on his
15 computer. That was referred to in the complaint. And Judge
16 Jones imposed probation in that case.

17 And so I think that postoffense conduct really stands
18 out. His postarrest conduct I think stands out as well. There
19 was 11 months of compliance with his pretrial release. There
20 were no attempts to look at pornography. He stopped smoking
21 marijuana. He engaged very seriously in treatment. He wore
22 the ankle bracelet and was on home detention. And his
23 performance on pretrial supervision went beyond mere
24 compliance. He had two jobs and I know the Court read some of
25 the astute evaluations that I had attached to my original

1 sentencing letter. He made very serious efforts at treatment.
2 He wasn't going through the motions. He just wasn't doing what
3 the Court told him he had to do. He was really committed to
4 progress. Again, Dr. Barday at the time concluded that he
5 wasn't dangerous, he wasn't a pedophile, that there was no risk
6 of recidivism. This was all very powerful evidence in favor of
7 community-based supervision, and Mr. Bennett's opportunity to
8 continue treatment.

9 I think now the big piece that we have and the new
10 information is the postsentencing conduct, and we have seen
11 that Mr. Bennett has done all that he could. He completed
12 RDAP. He's continuing in the nonresidential program. And as
13 part of RDAP he really had to delve deep into his conduct, into
14 the root causes and into how to avoid behavior like that in the
15 future.

16 Although it's a drug and alcohol program, it's much
17 more than simply a rehab or abstinence program. It really,
18 really changes the way and teaches you how to change the way
19 that you approach decision making. And I know Mr. Bennett
20 talked about this a little bit in his letter. He can probably
21 describe it better than I can.

22 One thing that struck me in reading the transcript of
23 the last sentencing was the Court talked about how in viewing
24 these images Mr. Bennett didn't take into account the humanity
25 of the children. And that is something he had to do as part of

1 RDAP, something he had to specifically do as part of RDAP. He
2 had to write them letters. Obviously they are not letters that
3 they will ever actually get, but it was an exercise. He had to
4 write letters to the victims and he had to put himself in their
5 shoes and understand how not only the initial act of the
6 filming or the photographing affected them, but how file
7 sharing affected them and how these later cases might affect
8 them. He had to put himself in their shoes and really confront
9 the impact of his conduct. That's powerful.

10 And I think the records from the BOP that we were able
11 to obtain are truly amazing. The Court and I'm sure the
12 government have a little bit of a different experience than we
13 do in terms of getting things from the BOP because it's
14 probably much easier to get them to comply with your requests.
15 But for us it's very difficult to even get to the right person,
16 let alone to get them to respond or to do something over and
17 above their job responsibility. The fact that here two BOP
18 employees, they didn't just send us records that already
19 existed. They took the time to write letters about Mr.
20 Bennett. I think that speaks volumes to really how much they
21 saw in him, the effort that they saw him putting out, and
22 really the positive review they wanted to give him.

23 Dr. Wood, who I sort of quoted at the beginning and
24 whose letter is attached as Exhibit C to my December 2 letter,
25 she wasn't still treating Mr. Bennett at the time that we

1 reached out to her or in connection with this resentencing.
2 She actually had moved to a BOP facility in Kentucky and she
3 was still willing to take the time to support him and help him
4 out.

5 And I think the letter, which I think is attached as
6 Exhibit D, from drug treatment specialist Kinard is actually
7 given in a very BOP way. The story behind that letter is very
8 telling. When our amazing paralegal, Kate, who I know had to
9 run out to the MCC, first reached out to him, he said, yes, he
10 would send in something showing that Mr. Bennett had completed
11 the program. He sent us a letter marked Exhibit D and it just
12 has the word successfully in it.

13 Kate called him and said, is there anything you can
14 tell us about his completion of the program? And he said, yes,
15 yes, very enthusiastic. Sent her back the letter that said he
16 successfully completed the program. And Kate thought, OK,
17 that's not as much detail as we were hoping for. And she
18 didn't call him or do anything. And shortly thereafter she got
19 another e-mail from him and he said, disregard the last letter
20 and use this one, and he had bolded successfully.

21 It seems minor, but to us, in our experience in the
22 way that BOP employees see our clients and treat our clients
23 and the minimal steps that they are willing to go to to even
24 recognize their humanity, the fact that he took the time to not
25 only tell us that it was successful, but to then make the

1 further effort to bold successful. He just wanted the Court to
2 know that Mr. Bennett has been very successful in the program,
3 and I think in a small way that really does speak volumes to
4 how special he is and to how extraordinary his postsentencing
5 conduct has been.

6 I know, as the Court said, and as I said earlier, his
7 performance may be exceptional, but none of us should be
8 surprised by it. The last four years have demonstrated how
9 unique he is. It's been almost four years since he had
10 anything to do with child pornography, since he had anything to
11 do with the conduct in this case. And that is so much more
12 information than most judges have when they sentence someone.
13 It says so much about whether any or how much prison time might
14 be necessary to deter a person or to rehabilitate a person, to
15 punish a person. It shows that those objectives of Section
16 3553(a) have been met.

17 Mr. Bennett has been in custody since September 5 of
18 2014. It's more than 27 months. In terms of pure numbers,
19 that's longer than the average sentence in a case like this in
20 this district.

21 The question the statute asks us today is whether
22 that's sufficient. And I submit, as the Court knows, that it's
23 more than sufficient, based on the facts of this case, which
24 include the offense conduct, but also include the trauma that
25 led him to that offense conduct and his exemplary conduct over

1 the four years since.

2 Based on all of this, your Honor, we respectfully
3 request that the Court impose a sentence of time served.

4 THE COURT: Thank you, Ms. Cross-Goldenberg.

5 Ms. Choi, is there anything that you would like to
6 add?

7 MS. CHOI: Your Honor, I'll just be brief because I
8 think my submission in anticipation of this resentencing sets
9 forth the government's position.

10 We think that this is a limited resentencing based on
11 a procedural error that was noted by Judge Calabresi sua sponte
12 for the first time in oral argument. It's very limited in its
13 scope.

14 I think that the Supreme Court's decision in *Pepper*
15 instructs that the Court has to obviously consider the 3553(a)
16 factors, including all of the considerations that
17 Ms. Cross-Goldenberg has set forth regarding the defendant's
18 postsentencing rehabilitation, but ultimately the question is
19 what weight to afford each of those factors, something that is
20 traditionally put into the deference of district court judges.

21 The government cited cases which where on appeal, even
22 if the defenders or individual Second Circuit judges may
23 disagree about what sentence they would have imposed had they
24 been in your shoes, these were significant sentences based on
25 offense conduct that due to the advisory sentencing guidelines

1 in those cases suggests similar to what happened in this case,
2 and those sentences were readily affirmed.

3 The only difference between what is happening now and
4 what happened two years ago is the ability for the defendant to
5 put forth these postsentence rehabilitation letters and reports
6 which show that the defendant is clearly on the right track.
7 But whether or not that warrants a material change is really up
8 to the discretion of you, your Honor.

9 And we think that resentencing the defendant to the
10 same sentence that you had imposed prior would be within your
11 discretion. It would also be within your discretion to give
12 the defendant credit for the efforts that he has made if you
13 think that that warrants a material change in the way in which
14 to weigh those individual factors.

15 Other than that, I don't know if you have specific
16 questions.

17 THE COURT: There was a lot of time spent in both
18 Ms. Cross-Goldenberg's written submission and today about these
19 other cases where other judges in this district appear to be
20 giving lower sentences. You countered in your letter with
21 cases in this circuit, including this district, where courts
22 have imposed higher sentences; in other words, guidelines
23 sentences, within guidelines sentences, or discounts that are
24 not significantly below the guidelines range, for example. I
25 don't know if you have any response to the cases she has cited.

1 MS. CHOI: Your Honor, let's be clear about a few
2 things with regard to the defendant's cited cases. I think I
3 made this point in our submission, the government's submission.
4 The sentencing guideline ranges there are much lower than
5 ultimately, assuming that the statutory maximum didn't
6 otherwise cap the guidelines range, the 135 to 168 that would
7 apply in this case. I think that would be a fair measure of
8 the type of offense conduct at issue here versus what happened
9 there.

10 I can't speak to whether or not these under 24-month
11 sentences are the average in the district. I'm not aware of
12 that fact. I tried to talk to the child pornography and sexual
13 exploitation of children coordinator. Tried to gather that
14 data. I was unable to do so prior to the deadline for my
15 submission. I apologize for that.

16 The point here is, there are other sentences that are
17 more significant than that that are not cited there, cases that
18 I have myself prosecuted. And I think the Second Circuit cases
19 that I've cited, although I can't represent that they are all
20 Southern District cases, the question on appeal is whether or
21 not there is substantive unreasonableness in those sentences.
22 Those ranges are more in accord with the offense conduct that
23 occurred in this case. Obviously, there was no statutory cap
24 necessarily in some of those cases. But I think it shows that
25 there can be a wide range of sentences that can be within that

1 range and it really just depends on the Court's individual
2 weighing of those 3553(a) factors. It's not a per se rule.

3 I think Ms. Cross-Goldenberg also mentioned this case,
4 I think it was before you, that she suggested that wasn't cited
5 in the footnote, this *Bryan* case where there could have been an
6 enhancement with regard to S&M that wasn't in fact imposed. I
7 can't speak to why there may have been pleas that are reached
8 in other cases but I can say here, there was no plea agreement.
9 This was a guidelines range that was affirmed by the Second
10 Circuit. I think that that guidelines range shows that this is
11 what applies and, of course, the guidelines range is but one of
12 several 3553(a) factors that the Court should take under
13 advisement.

14 I do think it is sort of a metric by which you can
15 weigh the severity of the offense conduct. It's very hard to
16 say in the abstract what exact factors applied in those cases
17 that spurred those district court judges. The question really
18 is whether or not the Court in this case believes that the
19 weight that is afforded the offense conduct in this case bears
20 the sentence it ultimately imposes. There are ample cases in
21 which the Second Circuit has affirmed much more significant
22 sentences than the one the Court has imposed in this case
23 against the defendant.

24 THE COURT: The *Bryan* case I'll just point out, that
25 sentence was within the guidelines range. It was 66-month

1 sentence where the range was 63 to 78 months.

2 Every case is different and as I said in that case and
3 as I say in this case previously, and I'm likely to say again,
4 I don't view the guidelines as a precise instrument, an
5 instrument that is to be followed at all costs. I think it
6 provides some insight. I think it's worth considering. In
7 fact, I have to consider it. But it doesn't dictate any
8 sentence that I impose.

9 Just in case the record wasn't clear in the *Bryan*
10 case, the guidelines range was much lower and the sentence
11 imposed was within the guidelines range and above the bottom of
12 the range. Here, obviously, in this case initially I sentenced
13 Mr. Bennett to a sentence that was 30 percent lower than the
14 guidelines range.

15 MS. CROSS-GOLDBENBERG: I think, your Honor, just with
16 respect to that *Bryan* case, my point there was that it
17 highlights that actually the guidelines are not a fair measure
18 necessarily of the underlying conduct.

19 THE COURT: I don't think I dispute that they are not
20 necessarily -- they may well often be a very clumsy instrument.
21 I've always thought that. But just to compare apples to
22 apples, I'm just saying, that is a case in which it was a
23 guidelines sentence. It wasn't like some of the others that
24 you talked about where they were well below the guidelines.

25 MS. CROSS-GOLDBENBERG: Right. But it was also the

1 case where, as I said, the government in its sentencing
2 submission referred to videos not just that depicted rape, but
3 had rape in the title. Yet, the four-level enhancement for S&M
4 did not apply or was not applied. And so his guideline range
5 would have been much higher, years and years higher, if those
6 four levels had been added.

7 THE COURT: I don't know of the reason why they
8 weren't. I just don't know. It wasn't an issue, didn't come
9 up.

10 MS. CROSS-GOLDBENBERG: Possibly because the parties
11 negotiated it out.

12 THE COURT: I don't think parties can't negotiate
13 facts out. They can't negotiate away evidence that's obvious.
14 I don't know at this point.

15 MS. CROSS-GOLDBENBERG: That was my point with respect
16 to that, your Honor.

17 I think, if it's OK with the Court, Ms. Cassidy does
18 have something she would like to add.

19 THE COURT: That's fine.

20 MS. CASSIDY: I would like to respond to the
21 government's statement about the remand of limited scope. It's
22 not. It's a remand for a resentencing which the Court can
23 consider every aspect of sentencing. This is nothing limited
24 about it. The Second Circuit was clearly troubled by the
25 overall length of the sentence.

1 THE COURT: They reserved on the issue of substantive
2 unreasonableness.

3 MS. CASSIDY: They did. And they emphasized that they
4 are taking no position at this time. Obviously, that was a
5 troubling sentence to the Court, considering all the
6 circumstances.

7 THE COURT: You are saying I should read into that,
8 that they are winking and nodding at me that I should give a
9 lower sentence because otherwise maybe they will slap me down
10 on substantive unreasonableness?

11 MS. CASSIDY: I think that they have explicitly
12 reserved on substantive unreasonableness.

13 THE COURT: I don't think I should infer one way or
14 the other whether they are signaling me that they think this is
15 substantively unreasonable.

16 MS. CASSIDY: I think that the emphasis that we are
17 taking no position at this time is sort of an implication of
18 that.

19 THE COURT: I wish they would be direct then. Maybe
20 you know better than I. You were there. Did he wink? Did
21 Judge Calabresi give you a signal of some kind? Did he say
22 something off the record?

23 MS. CASSIDY: No. I think it's implicit in that
24 footnote that they are emphasizing -- they are taking no
25 position on the substantive unreasonableness at this time, and

1 I think they were clearly troubled by the length of the
2 sentence.

3 THE COURT: What should I do from that, from the fact
4 that you have inferred that they are troubled? How troubled do
5 you think they were? Do you they were 30 percent troubled, 40
6 percent troubled?

7 MS. CASSIDY: I think the same as
8 Ms. Cross-Goldenberg --

9 THE COURT: I'm asking you to tell me what they were
10 thinking because you seem to have this insight that none of the
11 rest of us have.

12 MS. CASSIDY: I don't know specifically.

13 THE COURT: Maybe we should drop that as a subject.
14 What do you think. To try to read the minds of judges who
15 didn't even touch on the subject of substantive
16 unreasonableness. Maybe we will just leave that for another
17 day.

18 MS. CASSIDY: My main point was that there was nothing
19 limited about the scope of it.

20 THE COURT: Yes, and I think that's true.

21 MS. CHOI: Your Honor, I misspoke. I just meant that
22 the only error that was identified was limited to the
23 procedural error that was elucidated in the opinion itself, not
24 that the Court would be limited in any way about what sentence
25 it should impose at this time.

1 THE COURT: I understand the purpose of the remand, I
2 understand the scope of my discretion, which is significant,
3 and I certainly understand the importance of what I do and what
4 I'm doing here today.

5 Anything else we should cover?

6 Mr. Bennett, as I said, you have a right to speak if
7 you'd like. Is there anything you would like to say?

8 THE DEFENDANT: Yes, please. I didn't really write
9 anything. I just want to address the Court and I want to keep
10 it brief. I've spent a lot of time over the last two years
11 thinking about everything that has occurred, and I've taken it
12 very seriously. And I've spent a lot of time honestly just
13 crying. And not with tears necessarily, but crying out for
14 forgiveness because I did what I did. Because I looked at
15 those children and didn't respect them. And in a sober mind
16 and in a clean heart now, I see what I did four years ago
17 differently.

18 And I've honestly sought -- I don't know them and I
19 probably will never know them, but I sought forgiveness and
20 sought mercy and grace.

21 The funny thing is, so many days I would lay in that
22 cot looking at the ceiling or in the shower thinking about, if
23 this day would ever come, what I would say to you and now I'm
24 here and the words kind of escape me. I think what I really
25 just want to say is that I have taken this seriously, and I

1 understand what I did. I really do. And I know you have a job
2 to do. I know the prosecutor has a job to do. And I respect
3 that as well.

4 But I am asking for mercy because I didn't just go
5 through the motions. I feel like I've done the work.

6 There were some breakthrough moments for me when I was
7 in the RDAP program. I know it's a drug treatment program.
8 It's really about criminal thinking. There was a moment we
9 began talking about things like this. And I remember they said
10 that every time that there is a video that's identified, a
11 person who is in one of these child pornography videos that is
12 identified, even if they were an adult, some federal agent has
13 to come and say, is this you? That was a breakthrough moment
14 because it just made me think, wow, I was a part of that.

15 What I did was wrong and it was never my intention to
16 be a part of something like that. Nobody wants to be
17 potentially even within the same sentence as a pedophile.
18 Nobody grows up and has urges and temptations that they don't
19 know to do with and does certain things and wants to go down
20 this road and not take responsibility for it. I take full
21 responsibility for it. But I'm asking for mercy because I
22 think there is room for mercy here.

23 Two years ago, when I sat here and I had to hear
24 everything that was said and you said what you said, I am just
25 being honest, I wasn't angry, but it was constructive anger,

1 your Honor. I wasn't angry at you. I didn't agree with
2 everything, and I still don't necessarily agree with
3 everything. But it was an anger that I turned on myself to
4 say, I don't want for the rest of my life to be remembered as
5 this person. I didn't want to be a lawyer to grow up and be
6 this guy or be seen as this guy. So when I went into prison I
7 really sought to do the work. I mean, the letter that Dr. Wood
8 wrote, I really appreciate, she was the head of the RDAP
9 program and I also went to her for voluntary treatment, and we
10 talked about all of my issues, things I never discussed before
11 and things I will definitely not discuss publicly here.

12 But throughout this process it's been a long journey.
13 And some of the things you said I needed to hear at the time
14 because I listened and I read the transcripts. I went to
15 prison. I mean, I know you probably don't get to talk to
16 people after they are sentenced. That month after I was
17 sentenced, I couldn't even eat. I ate a little bit. I
18 couldn't sleep. I couldn't move. I'm talking to my mother. I
19 felt just like I just totally shattered her world.

20 And this changed me. You know, I'm not that young. I
21 was two years -- I was in this activity for one year. I was
22 two years out of law school. It was a long journey to get
23 there, looking at regular pornography, but it was all pushing
24 the limit. And I was young. And this is not to minimize what
25 happened, but I was dumb. You're two years out of law school.

1 I spent my whole life in school and then three years later I'm
2 in prison. And I look up and I'm like, what was life about?

3 And I've come to realize, life isn't about positions
4 or titles or accolades or where you went to school or how much
5 money you have. It's about being a pleaser. I will say it to
6 the lord for forgiveness, and that's part of the reason I'm
7 here, because somebody heard my prayers. I mean, honestly
8 somebody heard that I'm sorry and that my heart -- I'm trying
9 to be clean and trying to be pleasing.

10 You said last time, and I agree, this is bigger than
11 my personal journey. Prison will show you that. Prison. I'm
12 in the cell with -- I met so many people. I've seen stabbings.
13 I've seen sexual assaults. I have been in the room with old
14 men passing blood in the middle of the night on the toilet and
15 you're begging for a CO and the CO laughs or jokes. Just two
16 days ago they pulled somebody out in a stretcher and I
17 understand that no matter how much one does in life, one bad
18 decision can destroy everything. That's the lesson I get
19 beyond what I did to get there.

20 And so that's something I know one day I will be
21 released and my prayer is that it will be today. But whenever
22 it is, whenever I'm released, I'll always remember that lesson,
23 that what we do in private -- my mom was the one who told me --
24 matters. That's the only thing that matters is that I'll be
25 pleasing and that I go back to the roots that my mom instilled

1 in me from the beginning, fear and respect of the lord.

2 And I think -- you know, I learned in treatment the
3 difference between guilt and shame. And guilt is feeling bad
4 about what you did and I always feel guilty about it. But
5 shame is feeling bad about who you are. I couldn't even turn
6 around that last time. It was three hours and I just heard my
7 mom wailing behind me. I couldn't even look at her because I
8 was ashamed.

9 I'm no longer ashamed because I know in my heart that
10 from the moment these agents banged on my door in February
11 2013, I've been doing the work, and I have taken everything
12 seriously and I have heard everything that was said, and I've
13 come to be at a different place. I will just leave it at that.
14 I'm asking for mercy and I'm asking for grace. I'm asking for
15 grace, knowing that nobody deserves it. But because I know,
16 one, this will never happen again. This will never happen
17 again. Two, because I am a changed person. I hated prison,
18 but I learned from prison. And it's something that will always
19 stick with me, no matter what I become in life. I will never
20 think more highly of myself than what I am. Because in the
21 grand scheme of things I'm nothing and nobody. And there is
22 nothing that I can do that matters if I don't take care of
23 what's meaningful first.

24 That's all I want to say, Judge. Thank you.

25 THE COURT: Thank you.

1 MS. CLARKE: Can I say something, Judge?

2 THE COURT: Sure. Let's have you come up.

3 Marshals, OK if she comes to a microphone just so I
4 can hear Ms. Clarke and so the court reporter can hear
5 Ms. Clarke.

6 MS. CLARKE: Thank you, your Honor.

7 THE COURT: Could you state your name for the record
8 so the court reporter has it down.

9 MS. CLARKE: My name is Wanda Clarke. I'm Darrell's
10 mom.

11 So, your Honor, I don't even know where to begin. But
12 what I will say is, first of all, I don't make any excuses for
13 what Darrell did. I don't condone his behavior. It was wrong.
14 He knows it was wrong. I know it was wrong. He knows how much
15 what he did affected me. But Darrell has always been -- he's
16 the best thing that ever happened to me.

17 All of this didn't start in 2013. He has been
18 depressed for a long time. It was only a matter of time before
19 something happened. As a mom I felt so helpless. I didn't
20 know what to do. I didn't know how to help him. He was in New
21 York. I was in Virginia. I knew he was struggling. He had
22 finished law school. He couldn't find a job. Nobody would
23 hire him. Either he was overqualified or the first time he
24 didn't pass the bar, so he couldn't get a job as a lawyer. So
25 he had all of this pressure on him. I'm not making excuses,

1 your Honor.

2 I just want you to understand, he had all this
3 pressure on him, pressure from his family, from his peers, from
4 friends and from enemies. He just had pressure to perform.
5 And every rejection, I knew he was sinking further and further
6 into depression and I didn't know how to help him. I didn't
7 know what to do.

8 There were times, and I told you in that letter, when
9 Darrell was sentenced two years ago, it crushed me. But it
10 probably took me a month to realize that that might have saved
11 his life.

12 I realize that I wasn't afraid for the phone to ring.
13 It was years when Darrell would call and because I knew he was
14 so depressed, the phone would ring and it would be a New York
15 exchange. I didn't know what to expect because he was so
16 depressed. And he was all crazy about hurting himself. There
17 were times when I would call his friends because I couldn't get
18 in contact with him. Please check on Darrell. I'm in
19 Virginia. He wouldn't answer my calls. I didn't know what to
20 do. I knew it was only a matter of time before something
21 happened. I thought maybe I would be saying good-bye to him.
22 I thank God that he's still here today.

23 Unfortunately, we are here. I would have never
24 thought that this is where we would end up. Your Honor, you
25 talk about a deterrent. We are talking about a kid who worked

1 his entire life. He went -- he's been in school forever and he
2 has worked hard -- he went to undergrad, graduated as
3 valedictorian, went to Harvard Law, and he lost everything.
4 Talk about a deterrent. He lost everything. He still has to
5 start from ground up, from the bottom up. And I know it
6 doesn't make it right. We are not talking about a normal case.
7 I don't know. Your Honor, I just ask you to please consider
8 everything.

9 I think we are before you today. There is a reason
10 that we are here before you again today. And I think it's
11 bigger than any of us in this courtroom. Darrell, he worked
12 hard after he got sentenced. I was probably -- it took me a
13 lot longer than it did him to decide that he wanted -- that he
14 was going to do right. They sent him to Virginia. He went
15 through the program. And he was determined he was getting into
16 that program and he was so excited. And I watched him over the
17 year that he was in RDAP. I was in Virginia at the time. He
18 was in Virginia and I visited him every other week. And I
19 watched him grow and I watched the light return to his eyes.
20 And I watched the depression, and I felt like I had my son
21 back.

22 Then the program ended. Now what? There is nothing
23 else out there. I would love nothing more than to take my baby
24 home with me to Miami, to Florida, which is where I am now, so
25 he can begin to rebuild his life. He has lost everything. He

1 has got a lot of rebuilding to do.

2 That's all. Thank you, your Honor.

3 THE COURT: Thank you, Ms. Clarke.

4 What I'd like to do is take a short break. It's been
5 very emotional and maybe people can just catch their breath.
6 If they need a tissue or something, that's fine, or have a
7 drink of water. About five minutes. I am going to collect my
8 thoughts, also, think about what I've heard today and then I'll
9 come back and I'll announce the sentence then. Thanks. Thanks
10 for your patience.

11 (Recess)

12 THE COURT: Thanks for your patience. This is a
13 difficult day. In some ways it's particularly difficult for
14 Mr. Bennett, who has had to sit through now two sentencings. A
15 sentencing is a very traumatic day, both for an individual and
16 for his family, and I understand that. And I appreciate people
17 who are here today, those who wrote letters and Mr. Bennett's
18 own statements. I have high regard for the lawyers in this
19 case and I have high regard for Mr. Bennett and for his family.

20 I looked at my sentencing remarks from two years ago
21 and there is not very much I would change other than explicitly
22 stating a section of the guidelines. But in terms of the
23 factors that I have considered and the thoroughness with which
24 I approached sentencing and the time and attention I spent in
25 this case, I think that was reflected and it's repeated here

1 again today. I give this a lot of thought. It's not something
2 I do reflexively. I don't slavishly follow the guidelines. I
3 think it's inappropriate to do so and I have never done it.

4 I've talked about the various factors that I am
5 required to consider and I consider them all. And that was
6 true two years ago and it's true today. Two years ago I
7 certainly was of the view that Mr. Bennett was -- I think the
8 words I used were precious and I believed that. This is a
9 really precious life and a life that matters and a person of
10 tremendous talent and ability who has much to offer and will, I
11 have no doubt, do much to improve the lives of other people in
12 the world. I believe that. And so I begin with that. And
13 that was something that I was impressed with before and remain
14 impressed. He is not typical. I don't know if there is a
15 run-of-the-mill file-sharing case. I don't really think there
16 is because every case has a unique defendant and unique facts.
17 This case is certainly unique. Mr. Bennett is certainly a
18 unique individual.

19 In this case I certainly gave him credit two years ago
20 for the things he had done postoffense, postarrest, and up
21 until the point of sentencing. That was the universe of
22 information I had. I gave him credit for it because I think it
23 deserved credit. It was impressive. And that was, in large
24 part, why I departed the way I did, the reason I imposed the
25 sentence below what I would otherwise have imposed, guidelines

1 or no guidelines, given the conduct. That's still true today,
2 but maybe it's worth just sort of spelling out that certainly I
3 accept and credit the things that Mr. Bennett said.

4 Mr. Bennett, you said that you take full
5 responsibility for what you've done. I think that's true. I
6 think that was true two years ago. But if it's possible to be
7 more true today, I think it is. You said that you've taken
8 this seriously since the sentencing, and I believe you. You
9 said that you've not only taken this seriously, but you
10 understand what you did. You've reflected on it. You've
11 reflected on the humanity of the children involved. You didn't
12 just go through the motions you said. You said you were
13 ashamed, you were sorry, you sought forgiveness, and I credit
14 all of that. I think that that's true. And I think it's
15 admirable. I think that's what one would hope from a defendant
16 who has been sentenced. Although one may hope it, it doesn't
17 always come to pass. But in your case it did.

18 Since then, since I last saw you, you've done I think
19 everything you could with what's available to you to improve
20 yourself, to grow, to be better, and to prepare for when you're
21 eventually released. I give you credit for that.

22 I will say that the original sentence and the sentence
23 I imposed today is not really about incapacitation. I don't
24 view you as a predator. I don't view you as a pedophile.
25 There is no evidence to suggest you are those things and that's

1 not the driving factor for me in sentencing. I don't think I
2 need to cage you to keep you away from people.

3 In some cases I do have to do that or I have to think
4 about that more. It's not really the issue here. It's not
5 really about specific deterrence. I think you get it. I think
6 you understand, as you said. I think you've thought about this
7 and I think you've grown from it. And I think that that is
8 reflected in the fact that in the time that you were out before
9 sentencing there is no evidence that you returned to any kind
10 of child pornography, and I think that says that you are not
11 someone who is likely to go back to this. No one can know for
12 sure, but I think the evidence in front of me suggests that
13 this is not about really specific deterrence.

14 I do think general deterrence is part of it. I do
15 think that there is a need to send a message to others who
16 might consider engaging in this kind of conduct, that the
17 consequences are dire and severe and the punishment will be
18 swift and certain. I think that's important, to send that
19 message because hopefully it will have an impact on the way
20 others think who might be otherwise inclined to engage in this
21 kind of conduct.

22 But as your mother said, your story in which you've
23 really lost everything, everything you have worked your whole
24 life to attain, is in itself a cautionary tale and carries some
25 general deterrence impact beyond just the numbers of a

1 sentence.

2 This is not really about rehabilitation. I think for
3 the same reason that it's not about specific deterrence, it's
4 not really about rehabilitation. I think that you are moving
5 in a healthy direction. That was true before I sentenced you.
6 It's, I think, more demonstrably true today. Marginally more
7 because, as I said, I'm not that surprised by the things I've
8 read about you. It suggested to me that I think I sized up
9 your character pretty well when I sentenced you two years ago.
10 In any event, I have more evidence today of those things and it
11 confirms what I thought before, that you are not a likely
12 recidivist. You're not a person who is still in denial. You
13 are not a person who is a predator.

14 What was the principal driver of my sentence the last
15 time, and maybe I should have been more clear about this, maybe
16 I wasn't enough, at a sentencing it's so easy to focus on the
17 defendant and obviously focus should be put on the defendant.
18 But there are other people who are, of course, relevant and
19 also central to what's going on, and that's the victims, and
20 the impact a crime like this has on very real victims. None of
21 them are here in the courtroom. They have not been able to,
22 for whatever reason, come here and speak face to face and
23 articulate what this crime has done to them. But we do have
24 some evidence of that and my sentence the last time was in
25 large part about the specific harms caused by this crime and by

1 the need for a just punishment, something that will be
2 commensurate for a sentence that will be commensurate with the
3 harm.

4 And the harms here are very real and I've been
5 reluctant to sort of get into it sort of too much because some
6 of it is kind of ugly. But the presentence report talks about
7 the various images in this case, and it describes them in some
8 detail. And it's enough to make one wince. It's really
9 difficult. The videos and the images that were shared in this
10 case are really graphic and involve acts of violence against
11 young children. Some of the titles convey this. I'm reluctant
12 to say this because it's hard to hear and I know that Mr.
13 Bennett knows this already, but I think it has to be said
14 because that's central to assessing the harm.

15 But we are talking about files that were shared with
16 titles like Man Doing 10-year-old Ass; Oliver, 10 years old,
17 Enjoys Cum; VB Dad, Very Big Dad Plays with Little Boy; Man
18 Fucked 8-Year-Old Boy Nude, exclamation point; Men Playing With
19 Young Boy Nude; New Homemade Little Boy, 8 to 9 Years Old;
20 10-year-old Raped Like a Rag Doll in a Lot of Pain; 12-Year-Old
21 Boy Raped; Kid's 10-year-old Hole Widened and Being Fucked
22 Violently by Two Adults; another one called He Really Likes It,
23 No Wonder; Two Brothers 12 Years Old and 13 Years Old, Fucked
24 by Their Dad.

25 You get the idea. These are brutal, brutal images

1 that were traded, downloaded, shared time and again. And these
2 are human beings. I know you have thought about this and you
3 understand this. And I'm not here to wag my finger at you or
4 to get angry at you. It's just to remind you of the human
5 lives affected by this. There was a victim impact statement
6 that was provided in this case. One of the children who
7 appears in one of the videos or images that was on your hard
8 drive that were shared by you.

9 And the question that these victims were asked
10 included this question: What sentence would you like a judge
11 to order for someone caught sending, receiving, or possessing
12 sexually explicit pictures of you? And one victim answered:
13 Thirty years in jail. I wonder what his mother would say to
14 that question or what his friends would say to that question.

15 Here is another question he was asked as part of the
16 victim impact statement. Is there anything else you would like
17 the judge to know about how you feel because of what has
18 happened to you? The answer is tortured. One of the images
19 that was involved in this case involved a victim who has since
20 been identified and is identified only as Andy. It's not his
21 real name. He was sexually abused by an adult between the ages
22 of seven and 12, now older, and there is submission of an
23 evaluation of him and it says -- I'll read partly from it.
24 Clearly, this child sex abuse images of Andrew have been widely
25 distributed and are very popular among those arrested with

1 child pornography in their possession. The sexual acts
2 depicted include the full range of sexual acts from fondling to
3 oral copulation and anal intercourse. It goes on to say: "The
4 intensity of his, Andrew's, distress and the degree to which it
5 impairs his health and functioning will also fluctuate. Andrew
6 started smoking cigarettes at age 12. He has experimented with
7 various drugs, including alcohol, marijuana, and painkillers.
8 He used methamphetamine for almost a year.

9 Andrew talked during the interview of being "bugged
10 every day" with thoughts about not knowing if someone has seen
11 him on the Internet. The report continues: The sexual
12 exploitation is ongoing, sexual victimization without end. The
13 ongoing stress of his knowing that the images and videos of his
14 sexual abuse are circulating blindly on the Internet make
15 healing and overcoming the sexual trauma more difficult.

16 I can't ignore that. I can't ignore what has been
17 done to these children, both by those who made the images, who
18 are the most guilty, most culpable and deserving of the
19 greatest punishment of course, but also by those who shared
20 those images, who distributed them, who enjoyed them, and
21 perpetuated that victimization. I don't think it's a passive
22 thing. I don't think it's worth a five-day term of
23 incarceration, as Judge Weinstein recently found in a case.
24 That's different. Every case is different. I get that.

25 You heard the titles I just read. They are

1 descriptive and self-explanatory, and they reveal victims who
2 are the most vulnerable in our society, who are then subjected
3 to abuse again and again every time somebody downloads the
4 images of their rape, of their abuse.

5 That's what went on here. It went on for a while.
6 And it went on in a callous way. And there is punishment that
7 has to come from that. As I said before, and you remembered
8 it, and I don't mean it sarcastically or pejoratively, it's not
9 all about your personal journey. I think you are a decent man
10 and I think you have very good qualities and I think you will
11 grow from this and you will move on. I'm not sure Andy and
12 some of the other kids depicted in these videos will move on
13 ever. You didn't rape them. Of course you didn't. But you
14 certainly harmed them in what you did, and there has to be
15 punishment for that.

16 Two years ago I concluded for all the reasons I'm
17 saying now that seven years was an appropriate sentence. I
18 still believe that to be true. However, I do think that with
19 the passage of two years and with the additional information
20 about what you've been doing, there has to be some reward for
21 good behavior. There has to be some acknowledgement and
22 encouragement when I have additional information. That has to
23 count for something. It won't count for as much as
24 Ms. Cross-Goldenberg would wish for or you or your family would
25 wish for, and I respect that. I understand that. But for me

1 it entitles you to something and I think that something for me
2 is 18 months off of the original sentence. To do more than
3 that I think would be to disrespect these victims and to
4 disrespect the enormity of the harms caused by this crime. But
5 it still is a reflection, I hope and intend it to be a
6 reflection of your progress and a reflection of the qualities
7 that I talked about. And so that's the balance I hope to
8 strike. I don't know what the victims would say if they
9 learned of this sentence or my reasoning. They might say this
10 is nonsense, that I don't understand their pain sufficiently or
11 haven't thought about it long enough. I'm a human being. I
12 have, I'm sure, my own weaknesses, my own failings and
13 sentencing is a hard thing to do. We all do our best.

14 It's not surprising that we sometimes come out in
15 different places, and I don't think sentencing guidelines can
16 ever replace the judges tasked with this responsibility, and I
17 think this is why they put me on the bench was to exercise my
18 judgment.

19 For me that's the appropriate sentence in this case.
20 That's the sentence that I intend to impose. It will be a
21 sentence of five and a half years, which will be 66 months.
22 All the other conditions of supervised release will remain.
23 All the other conditions, including restitution of a thousand
24 dollars to Andy, which was the subject of a prior order by the
25 Court. Everything else will remain the same.

1 That's the sentence I intend to impose. Is there any
2 legal impediment to me imposing that sentence?

3 Ms. Cross-Goldenberg.

4 MS. CROSS-GOLDBENBERG: No, your Honor.

5 THE COURT: Ms. Choi.

6 MS. CHOI: No, your Honor.

7 THE COURT: Let me ask you to stand, Mr. Bennett.

8 Mr. Bennett, you know how we got here. Having
9 accepted your guilty plea, having sentenced you before, but now
10 on remand from the circuit having the opportunity to sentence
11 you again, I impose a sentence of 66 months' incarceration,
12 which is an 18-month reduction from what I had imposed before,
13 in light of all the things I talked about, with credit for the
14 time you've already served. In addition, I will impose a term
15 of supervised release of five years with all the terms and
16 conditions previously imposed. I'm happy to read them, but if
17 you don't think it's necessary, I won't.

18 MS. CROSS-GOLDBENBERG: I don't think it's necessary,
19 your Honor.

20 THE COURT: I will impose restitution of \$1,000 to the
21 victim identified previously as Andy or Andrew. In addition, a
22 \$100 special assessment. I am not going to impose a fine, of
23 course.

24 Are there any additional recommendations that you
25 would like me to make with respect to placement, now that his

1 mom is in Florida? Would you like him to go to Florida or
2 someplace closer to Florida?

3 MS. CLARKE: Please.

4 MS. CROSS-GOLDBENBERG: If I can just have one second.

5 Yes, your Honor. If the Court would recommend that he
6 be designated somewhere close to the Miami area to facilitate
7 family visits with his mother.

8 THE COURT: I'm happy to make that recommendation.

9 MS. CROSS-GOLDBENBERG: I think the plan would be, as
10 she indicated, that that's where he would live with her when he
11 is released.

12 THE COURT: I'll make that recommendation in the
13 strongest terms I can. It's up to the Bureau of Prisons, but I
14 will certainly make the recommendation.

15 Is there anything else we should cover today?

16 You have a right to appeal this sentence. If you wish
17 to appeal, you need to file a notice of appeal within two
18 weeks. Probably two weeks from Monday. I'll get the judgment
19 out on Monday. Talk to your lawyers about that. But I think
20 you're familiar with that process. Thanks. It's been a long
21 day.

22 Ms. Choi, anything else you've overlooked?

23 MS. CHOI: Your Honor, I hate to bring up a few
24 things. Just to make sure that we have dealt with all the
25 record issues. Just that I presume that your Honor adopts the

1 factual findings of the PSR but for the guidelines range which,
2 as you said, was 120.

3 THE COURT: Yes. The circuit has already affirmed the
4 calculation. I think the only thing that was remanded was to
5 make sure that it was crystal clear that the guidelines range
6 was 120 months, which is the statutory maximum, and, by virtue
7 of Section 5G1.1(a) of the guidelines, becomes the guidelines
8 range where the range otherwise calculated would be higher than
9 the statutory maximum. I think that's clear, but I thought it
10 was clear the last time.

11 MS. CHOI: I also don't think that either party has
12 any new PSR objections. And I also would just be remiss, if
13 the Court could simply remind the defendant of his SORNA
14 obligations, so he remembers them.

15 THE COURT: I should ask, no other objections to the
16 presentence report?

17 MS. CROSS-GOLDBENBERG: Not from us, your Honor.

18 THE COURT: As part of supervised release, once you
19 are released, you have obligations to report as a sex offender.
20 I think we talked about this last time. This is an obligation,
21 so wherever you reside, you'll have to report and give notice
22 of where you reside and register as a sex offender. And
23 failure to do that would be a crime and it's also a condition
24 of supervised release. Is that sufficient?

25 MS. CHOI: Yes, your Honor. Thank you.

1 THE COURT: Anything else?

2 MS. CROSS-GOLDBENBERG: Not from us, your Honor.

3 THE COURT: Thanks very much. This has been a long
4 day and I know it's a very emotional day. I have explained my
5 reasons and I certainly respect that people can disagree. But
6 I'm really sincere when I wish you the best, Mr. Bennett, you
7 and your family. Good luck to you.

8 THE DEFENDANT: Thank you.

9 THE COURT: Let me thank the marshals and the court
10 reporter as well.

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